No. 11864

In the United States
CIRCUIT COURT OF APPEALS
for the Ninth Circuit

RECONSTRUCTION FINANCE CORPORATION, a corporation,

Appellant,

vs.

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, a corporation,

Appellee.

BRIEF OF APPELLANT

Upon Appeal from the District Court of the United States for the District of Oregon.

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Upon Appeal from the District Court of the United States for the District of Oregon.

JURISDICTION

Plaintiff, Appellee, Spokane, Portland & Seattle Railway Co. (hereinafter called Carrier), brought this action to collect from defendant, appellant, Defense Supplies Corporation (hereinafter called DSC) undercharges on certain carload shipments of Ethyl Alcohol transported

from New Orleans and Harvey, Louisiana to Portland, Oregon. The goods moved in Interstate Commerce and were subject to rates as prescribed by the duly filed tariffs with the Interstate Commerce Commission (Complaint Tr. p. 2; Pre-trial Order, Tr. pp. 14-15). The matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000. Jurisdiction is invoked under Interstate Commerce Act. 49 U.S.C.A., Sec. 1 et seq.

The Defense Supplies Corporation is a corporation created by the Reconstruction Finance Corporation (hereinafter called RFC) pursuant to Sec. 5(d) (3), of the Reconstruction Finance Corporation Act, 15 U.S.C.A. Sec. 606b(3). Its stock is wholly owned by the RFC, the stock of which, in turn, is wholly owned by the United States. DSC was formed "to procure, acquire, carry, sell, or otherwise deal in strategic and critical material as defined by the President". By Act of Congress, July 1, 1945 (Public Law 109, 79th Congress, Ch. 215, 1st Session), all functions, powers, duties, assets and liabilities of DSC were transferred to RFC. RFC was duly substituted as defendant in this action by order of the District Court (Transcript of Record in this Court, (hereinafter referred to as Tr.) p. 6; Answer and Counterclaim, Tr. p. 8; Pre-trial Order, Tr. p. 15) 15 U.S.C.A. 601 et seq.

STATEMENT OF THE CASE

Appellee, Spokane, Portland & Seattle Railway (hereinafter called Carrier) brought this action as delivering or terminal carrier to collect from Defense Supplies Corporation (hereinafter called DSC), alleged undercharges arising out of the transportation in April, 1943, of 45 carloads of Ethyl Alcohol shipped from New Orleans and Harvey, Louisiana to Portland, Oregon, by DSC to the War Shipping Administrator, as Principal a/c Soviet Government Purchasing Commission.

The complaint as originally filed contained two causes of action aggregating the sum of $14,145.09 (Tr. p. 2). The RFC as substituted defendant (see above under "Jurisdiction") filed its answer and counterclaimed therein for $2826.09 (Tr. pp. 6-11). Thereafter RFC filed an additional counterclaim (permissive) for $17,681.92 which was reduced in the pre-trial order to $3,012.82 (Tr. p. 14). The complaint involved two disputed matters:

1. The difference between the commercial rate for the transportation of Ethyl Alcohol established under tariffs filed with the Interstate Commerce Commission and lower rates, arrived at by deducting from the tariff rates, certain so-called land grant allowances reserved to the United States under the Transportation Act of 1940.
2. The difference between Item 1497 and Item 1563 of Transcontinental Freight Bureau West-Bound Tariff No. 4-T, the applicable tariff (Tr. p. 32, Pl. Ex. 11).

Before pre-trial Carrier admitted that RFC was en-

titled to the land grant deductions claimed and thereafter the only matter which remained for the Court's determination was the item numbered 2 hereinabove. Such admission also changed the proceeding from one by the Carrier against RFC for the recovery of $14,-145.09 to one whereby RFC would be entitled to recover against the Carrier the sum of $6,150.18 if the above mentioned Item 1563 of the tariff was the applicable rate, or the sum of $2,743.09 if the higher rate, Item 1497, was applicable.

The alcohol was shipped to the Soviet Union under Lend Lease Agreement between the United States and the Soviet Government for use by the Army of the Soviet Union in the manufacture of explosives and synthetic rubber. It was transported under an arrangement between the Treasury Department and DSC whereby the charges were to be paid initially by DSC and reimbursed to DSC upon presentation of invoices to the Treasury of the United States Government (Tr. p. 17).

The contested issue framed by the pre-trial order (Tr. pp. 19-20) was whether Item 1497 of the Transcontinental Freight Bureau Tariff 4-T or Item No. 1563 of that tariff (both items subject to land grant deductions) was applicable to the shipments involved.

It was stated in the pre-trial order that the issues as to computation of rates involved mixed questions of law and fact for determination at the trial and the parties "would supplement the stipulated facts by some explanatory testimony" (Tr. p. 20).

Said Items No. 1497 and 1563 are set out in the tariff as follows:

> Item 1497—"Alcohol NOS."
>
> Item 1563—Alcohol (other than denatured or wood) in bond.
>
> NOS is defined in the tariff as: "N.O.S. When used in connection with an article in an item of this tariff carrying carload commodity rates means, 'not otherwise specified in any other item of this tariff carrying carload commodity rates between the same points on that article irrespective of package requirements.' "
>
> The rate on Item 1497 is $1.49 per hundred pounds and the rate on Item 1563 is $1.23 per hundred pounds. (Tr. p. 35, Pl. Exhibits 2 and 11, Tr. p. 31).

The alcohol was owned by the Defense Supplies Corporation, tax-free and was so described in the Bills of lading (Tr. p. 34). It moved under permit obtained pursuant to U. S. Treasury Department, Bureau of Internal Revenue Regulations 3, covering Industrial Alcohol, Sec. 183.580-.584, entitled Tax-Free Withdrawals by the United States or Governmental Agency (See Appendix, this brief). RFC contends that Item 1563 is the proper classification for the shipments herein involved and the rate of $1.23 per hundred pounds should be applied. The case was tried without a jury.

The District Court found (quoted in part only) (Tr. pp. 22-23):

> "1. All of the alcohol involved in this proceeding was tax-free alcohol owned by Defense Supplies Cor-

poration and Reconstruction Finance Corporation, each of which are instrumentalities of the United States.

"2. Such alcohol was not in bond within the meaning of Item 1563 of Transcontinental Freight Bureau West-Bound Tariff No. 4-T, but was alcohol N.O.S. within the meaning of Item 1497 of said tariff. * * *"

Based upon the findings judgment was entered in favor of RFC against Carrier in the sum of $2,743.09 (Tr. p. 24).

SPECIFICATIONS OF ERRORS

1. The Court erred in finding that the alcohol was not alcohol in bond within the meaning of Item 1563 of Transcontinental Freight Bureau West-Bound Tariff No. 4-T, but was alcohol NOS within the meaning of Item 1497 of said tariff, and that the applicable rate for all such shipments was that specified in said Item 1497, subject to land grant deductions.

2. Said finding is clearly erroneous.

3. Said finding is based upon an erroneous construction of the applicable tariff.

4. There was no substantial evidence to sustain said finding.

5. The Court erred on the grounds set forth under Nos. 2, 3, and 4 respectively hereinabove in finding as follows:

a. That the sum of $2,119.12 instead of $2,826.08 is due and owing to defendant from plaintiff on defendant's counterclaim to plaintiff's first cause of action herein.

b. That the sum of $1,865.96 is due and owing to plaintiff instead of $311.28 is due and owing to defendant from plaintiff on the second cause of action herein.

c. That the sum of $3,012.82 instead of $2,489.93 is due and owing to defendant from plaintiff on defendant's permissive counterclaim.

6. The Court erred on the grounds above stated in not granting judgment in favor of RFC against Carrier for the sum of $6,150.18.

7. The Court erred in sustaining plaintiff's objection to evidence, to-wit: RFC's pre-trial Exhibits 3, 4, 5, 6, and 13 were offered in evidence in explanation of the term "in bond".

The Court sustained objection of counsel for plaintiff on the ground that the same were irrelevant and immaterial in that the exhibits were part of tariffs of other lines of carriers not involved in the case. The Court rejected said exhibits (Tr. pp. 44-45).

SUMMARY OF ARGUMENT

The Specifications of Error 1 to 6 inclusive may be considered under two broad divisions, one a question of law, the other, a mixed question of law and fact. The

construction of a tariff is a matter of law for the courts where the words of a tariff have an ordinary meaning. Where the only question is whether the commodity shipped is the commodity referred to in the rate, then a factual question is presented. The Appellant contends that when the tariff Items 1497 and 1563 of the Transcontinental Freight Bureau West-Bound Tariff No. 4-T are properly construed the rate under Item 1563 (the lower rate of the two, or $1.23 cwt.) should apply.

It is the duty of the Court in construing a tariff to consider the end in view, and the object to be obtained by its framers when this can be done consistently with the words used. In *Chesapeake & O. R. Co. v. V. U. S.*, 1 Fed. Supp. 350, the Court had to determine as a matter of law whether personal effects of U. S. Government and Army officers should be classified so that the "Household Goods" rating or "Emigrant Moveables" rating be applied. The Court after pointing out that the sole and only question for legal construction in such cases is: "What classification applied?", said:

> "The question may be intelligently and legally solved not alone by a reading of the terms or words of the respective classifications made, but by their history and the practical and fundamental reasons that are involved in their respective application to shipments of freight."

Of course, an error of law may be corrected by the reviewing Court. Likewise, if the determination of whether the shipments fall within one or the other of two tariff items, particularly when such determination is

based upon undisputed facts and documentary exhibits, the reviewing Court may reverse the findings and the judgment of the lower Court when the Court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. *United States v. United States Gypsum Co.* (Decided March 8, 1948), ... U.S. ..... , 68 S. Ct. 525, 542, ... L. Ed. ... .

ARGUMENT

As indicated in the foregoing summary, the Specifications of Error 1 to 6 assign as error, on the grounds therein stated and for the reasons hereinafter appearing, the finding of the District Court that Item 1497 (Alcohol, N.O.S., rate $1.49 cwt.), is the rate to be applied to the alcohol shipments involved in this case instead of Item 1563 (Alcohol, in bond, rate $1.23 swt.).

The determination as to which rate should be applied is, of course, inextricably connected with the interpretation of the term "in bond" and the classification of the article transported. The position of the Carrier can be stated, it seems, in the words of its witness, Block, (Tr. p. 36) who testified in part:

> "It has been our position that the alcohol involved in this case was not in bond, consequently Item 1563 is inapplicable, and this item being inapplicable automatically makes the provisions of 1497 the proper rate item to apply."

He having just previously read from the tariff, Plaintiff's Exhibit 11 (Tr. pp. 32 and 35), the following:

> "N.O.S. When used in connection with an article in

> an item of this tariff carrying carload commodity rates, means 'not otherwise specified in any other item of this tariff carrying carload commodity rates between the same points on that article irrespective of package requirements'."

In other words, the Carrier says that the alcohol was not in bond, "or could not be considered in bond" (Re-cross exam. of witness Block, Tr. p. 38) and therefore the NOS rate "automatically" applies.

It is submitted that the question to be settled in this case is not quite so simple.

The alcohol at all times during its transportation was United States Government owned Tax Free Alcohol and was so described in the bills of lading. The term "in bond" as used in the tariff may legally be interpreted to include the alcohol involved herein, for when the question is, what classification applies?, the question may be solved not alone by a reading of the terms and words of the respective classifications made, but by their history and the practical and fundamental reasons that are involved in their respective application to shipments of freight. *Chesapeake & O. R. Co. v. U. S.,* 1 Fed. Supp. 350.

Witness I. M. Griffin, Asst. Director Office of Defense Supplies, RFC, discussed the reasons for the classifications involved in this case, and why Item 1563 was the rate that should be applied, in his testimony (Tr. pp. 46, 47, 48). He stated (in part):

> "There would be no reason in the minds of people making the shipments that the Government, the

> United States Government, who were the owners of this alcohol should give a bond to themselves or put this alcohol in bond."

Another point on which he gave testimony was the value of the alcohol, exclusive of tax, being 60 cents a gallon, while the tax thereon was about $10.00 a gallon. More accurately for the record reference may be here made to the Internal Revenue Code which shows the tax at the time of the shipment of this alcohol was $6.00 per 160 proof gallon or about $9.60 per gallon. Section 602, Revenue Act of 1942, 26 U.S.C.A. Internal Revenue Acts, p. 363.

Witness Michelson, an employee of the Carrier was called in rebuttal and gave some testimony concerning procedure on "in bond" shipments, and on Cross-Examination testified that the purpose of notifying the Collector of Internal Revenue on "in-bond" shipments is

> "to negotiate the collection—primarily, I should have said, is to negotiate the collection of Internal Revenue Tax." (Tr. pp. 56 and 57)

The rate on freight is indissolubly bound up with valuation of the article transported. In *U. S. v. Born,* 104 F. (2) 641, C.C.A. 2nd (1939), cert. denied 308 U.S. 606, the status of tax free alcohol became important in connection with a distiller's bond given to assure the payment of tax of denatured alcohol, free of tax, if such alcohol was diverted to beverage purposes. The Court mentioned that "for all appeared", Born purchased denatured alcohol from concerns that held it free of tax, and observed:

> "It would be quite unreasonable to suppose that tax-wise the denatured alcohol was in a state of flux, now free of tax, and now taxable, depending on the good faith of successive owners."

In a later case involving the same question, *United States v. Van Shaack Bros.,* (1940) 33 F. Supp. 822, the Court included the above quotation in its opinion with respect to the rule that the basic tax was payable only by the distiller and could not lawfully be assessed against the defendant Shaack Bros.

We quote from witness Griffin's testimony in the instant case (in part, Tr. p. 6):

> " * * * so when it became necessary to move alcohol from storage as in the instant case, why, it was necessary for the Government to get a permit to move that alcohol, which they did, and it was described and located as free of internal tax, Internal Revenue Tax, or tax free, and it was so billed. * * * ."

The Carrier here makes much of its position that the Alcohol shipped was not in-bond according to its understanding of that term. In *Penn. R. Co. v. U. S.,* No. J-196, Court of Claims, (1930) 42 F. (2) 600, the court pointed out that the defendant made much of the fact that shipments of crepe paper bandages for surgical dressing was not medicated and was not to be applied directly to the wound. When such bandages were shipped there were no tariffs on file with the Interstate Commerce Commission providing a rate on "crepe paper bandages for surgical dressing", by that name. There were, however, on file with the commission tariffs pro-

viding class rates between the point of origin and destination, applicable as follows:

> "Surgical bandages or antiseptic gauze in boxes, first class rate, any quantity, $2.035 per hundredweight;
>
> "Paper, crepe, in boxes, first class rate, any quantity, $2.035 per hundredweight.
>
> "Paper, N.O.I.B.N. (not otherwise indexed by name) not printed nor imprinted, in boxes, bundles, crates or rolls, third-class rate less than carload, $1.555 per hundredweight. * * *"

The railroad billed the U. S. Public Health Service upon a classification of the commodity as coming within either the first or second of the above tariff rates, but the Comptroller General declined to approve the bills, contending that the NOIBN rate was applicable. The Court pointed out that the single issue was the ascertainment of a proper classification for the article involved, and said:

> "If the specific article is devoid of features, character, and use which entitle it to be classified as the manufacturer of the article classified it, and possesses no characteristics which bring it within the specific classification contained in the consolidated freight classification, then of course it falls within the comprehensive and general classification N.O.I.B.N."

The Court found for the railroad carrier from the evidence that the article was a surgical bandage and that either of the first above mentioned two rates should be applied, viz. $2.035.

In *Macon D. & S. R. Co. v. General Reduction Co.,*

44 F. (2) 499, Cert. denied 283 U.S. 821, the Court stated that the question was whether fuller's earth ought to be hauled as clay had already been determined by the Interstate Commerce Commission and answered in the negative, so that the sole question for the Court was whether the material tendered as fuller's earth, a matter on which the Commission had no superior knowledge. In its decision, the Court distinguished the case under consideration from the cases involving matters which are peculiarly for the handling of the Commission and compared the facts of the fuller's earth case with the shipments of cross-ties involved in *Texas & Pacific Railroad Co. v. American Tie & Timber Co.,* 234 U.S. 138, 34 S. Ct. 885, 58 L. Ed. 1255. The dispute therein was whether cross-ties were included in the lumber classification, there being no rate specifically for cross-ties. There was great dispute among railroad people and lumber men as to whether cross-ties were lumber. The railroads had amendments of rates to include cross-ties pending before the commission. The Supreme Court held that the question as to whether cross-ties ought to be included in the lumber rate was a question within the rate-making responsibilities of the Commission, which the courts ought not to attempt to decide. The Court returning to its discussion of the subject in hand, fuller's earth, said:

> "While the question there" (cross-ties case) "has a superficial resemblance to that here, they are at bottom different. In the former case there was no dispute as to the identity of the subject-matter of the shipment, which was agreed to be cross-ties, but

> the question was whether they ought to be hauled as lumber and on the same rate as lumber was hauled. This really involved rate making considerations, which are peculiarly for the handling of the commission."

In *American Rwy. Express Co. v. Price Bros.*, 54 F. (2) 67, 5th C.C.A. (1931), the shipper raised small onions and shipped them in crates to others to plant out and grow to maturity. The Express Co. had a published rate on "Onions, Green", and a higher rate for "Plants, Strawberry and Vegetables". The Court directed a verdict for the shipper on the lower rate. On appeal, the Express Co. contended that relief could be had only before the I.C.C. and that the evidence did not demand the verdict. In affirming the Court said (in part):

> " * * * The only question is as to which of the two rates when properly construed was applicable to the thing shipped. This is not a question exclusively for the Interstate Commerce Commission, but is a judicial question which the Courts may handle in the first instance. * * *
>
> "Rate schedules are required to be published by posting, are for the information and use of the general public, and generally words used in them are to have their common meaning."

Specification of Error No. 7 concerns the rejection by the District Court of certain exhibits offered in evidence by RFC and identified as Defendant's pre-trial exhibits 3, 4, 5, 6, and 13. (The exhibits are not set out in the printed Transcript of Record since this Court has duly made an Order that such exhibits will be considered in their original form (Tr. p. 66)). Each of the

rejected exhibits is substantially of the same import as said Exhibit 6, which was offered together with the rest of the rejected exhibits as explanatory evidence in connection with the meaning of "in bond" (Tr. p. 45). The court rejected the exhibits as substantive evidence (Tr. p. 45).

We quote the specific objection made by counsel for Carrier:

> "If your honor please, the plaintiff objects to the admission of these exhibits on the ground that they are irrelevant and immaterial to this case, and wishes to point out in particular that the exhibits are tariffs of other lines of carriers not involved in this proceeding, and that the description of the commodity involved, namely 'Alcohol, in bond' is not the same in those tariffs as it is in this proceeding; therefore, it has no bearing. The way that alcohol in bond is described in those tariffs can have no effect here or any bearing on the way that this tariff should be construed." (Tr. p. 43)

Plaintiff's pre-trial exhibit No. 6, together with other exhibits, 3, 4, 5, and 13, were admitted without objection as to authenticity and made a part of the pre-trial order with the right reserved for objection to materiality at the trial (Tr. p. 20). The exhibit No. 6 consists of a photostat copy of the front cover and several pages taken from New Orleans Freight Bureau, Freight Tariff 14-G, issued by W. P. Emerson, Jr., agent. It is entitled "ALCOHOL TARIFF". It prescribes rates on Alcohol shipped from Southern States to Southern, Northern and Eastern States.

On page 48 of the exhibit will be found the following:

> "Item 515 Alcohol (other than denatured or wood alcohol) in bond (free of internal revenue tax)" etc.

and on page 50:

> "Item 560 Alcohol, in bond, free of Internal Revenue tax," etc.

It is submitted that the foregoing descriptions, the first containing the words "free of internal revenue tax" in parenthesis immediately after the words in bond, and the second, containing the same words, "free of Internal Revenue tax" separated by commas, shows the construction placed upon the words, in bond, by the Carrier and gives to the term the same meaning as testified to by RFC's witness, Mr. Irving M. Griffin (Tr. pp. 46, 47 and 48).

Such evidence is offered for the same purpose as the arrival notice was offered and admitted in *Standard Brands, Inc. v. Eastern S. S. Lines, Inc.,* (C.C.A. 2) 97 F. (2) 918. The Court said (p. 920):

> "* * * The evidence was not received to vary any statutory, or bill of lading, notice but to show that the defendant understood that the words 'on hand India Wharf' covered freight also physically at Central Wharf across the slip. The evidence simply explained a phrase customarily employed in the dealings between these parties and disclosed the meaning both attributed to it. * * *"

It is apparent that the subject commodity, Alcohol, is the same article as is described in both the rejected

exhibits and the exhibit consisting of the Transcontinental Freight Bureau Westbound Tariff No. 4-T, the applicable tariff which was admitted as evidence in the instant case (Pl. exhibit 2 and 11, Tr. p. 31 and 32). That the Carrier (SP&S) is a party to the tariff identified in the rejected Exhibit 6 will appear from the following:

1. Illinois Central Railroad is involved in all of the shipments of alcohol shipped in the instant case (Pl. exhibits 7, 8, & 9, consisting of Shipping Orders and Bills of Lading. Admitted (Tr. p. 31) either as originating or intermediate carrier.

2. The front cover of exhibit 6 shows that W. P. Emerson, Jr. is Agent and Attorney for Carriers listed on pages 3 thru 7 of the tariff. While pages 3 thru 7 of this particular tariff are not part of the record in this case, page 30 is and thereon appear the initials "IC" as one of the carrier roads subject to the tariff. The initials "IC" also appear on the bills of lading and shipping documents in connection with the alcohol, shipped in this case and delivered by the Spokane, Portland & Seattle Railway Co. "IC" is the abbreviation of Illinois Central Railroad Company.

   The rejected exhibit 13 consists of the bound volume of the New York Central Railroad Company Tariff 3010A and on p. 57 Alcohol is described in the same manner as in the tariff in Exhibit 6, "in bond (free of Internal Revenue tax)" p. 550 and immediately below described as in bond, both items being obviously one and the same commodity and description.

   That the Illinois Central Railroad is a party to the said New York Central Tariff appears on page 58 of the rejected exhibit No. 13, again by the abbreviation IC.

3. The Courts take judicial notice of well known methods adopted by Common Carriers in the operation of railroads and it is so generally known that "one carrier collects for all" that this Court may take judicial notice that Spokane, Portland & Seattle Railway, the plaintiff, appellee, designated as Carrier herein is the agent of Illinois Central Railroad Company, and Illinois Central is agent of Carrier.

In conclusion, in determining the meaning of "in bond" it may become necessary to decide the question whether such term has a certain and peculiar meaning known and understood only by a particular class of persons. In *James A. Councilor, et al. v. U. S.,* 89 Ct. Claims 473, the Court of Claims considered the meaning of the words "per diem" used in an employment contract between a Federal Agency and an accounting firm. The accounting firm contended that the established meaning of "per diem" in its business of 7 hours a day should be read into the contract. In holding for this construction, the Court cited (p. 480, supra) and quoted from Mr. Justice Rossman's opinion in *Hurst v. W. J. Lake & Co.,* 141 Or. 306, in which the rule is stated to be that: Members of trade or business group employing trade terms in written contract may prove such fact and show meaning of terms though instrument is unambiguous on its face.

In *Gill v. Benjamin Realty & Holding Co.,* (C.C.A. 3rd) 43 F. (2) 337 (Cert. denied 282 U.S. 892), the meaning of the term "Series B" became important with respect to a construction contract for the building of the

Benjamin Franklin Hotel in Philadelphia. The Court said (p. 338):

> "We cannot dogmatically say what 'Series B' means when applied to the position of the lien of bonds secured by a second mortgage. The testimony clearly shows that these words do not have any generally accepted meaning when thus used. They therefore brought into the description of the bonds a real ambiguity."

In *Lowrey v. Hawaii,* 206 U.S. 206, 27 S. Ct. 622, 626, Mr. Justice McKenna discussed the interpretation of the words involved, viz., "sound literature and solid science", and said (quoted from p. 218 of 206 U.S.):

> "The contentions of the parties are sharply in opposition as to the agreement and the necessity and competency of extrinsic evidence to explain it."

and at p. 221, said:

> "In Brooklyn Life Insurance Co., 95 U.S. 269, it was said 'There is no surer way to find out what parties meant than to see what they have done.' So obvious and potent a principle hardly needs the repetition it has received. And equally obvious and potent is a resort to the circumstances and conditions which preceded a contract. Necessarily in such circumstances and conditions will be found the inducement to the contract and a test of its purpose. The conventions of parties may change such circumstances and conditions, or continue them, but it cannot separate them. And this makes the value of contemporaneous construction. It is valuable to explain a statute where disinterested judgment is alone invoked and exercised. It is of greater value to explain a contract where self-interest is quick to discern the extent of rights or obligations, and never

yield more than the written or spoken word requires. * * * ."

The judgment entered in the District Court for $2,743.09 in favor of RFC and against the Carrier should be corrected so that the RFC is granted judgment against the Carrier for the sum of $6,150.18 and the findings to support such judgment be made to read "Such alcohol was alcohol in bond within the meaning of Item 1563 of Transcontinental Freight Bureau West-Bound Tariff No. 4-T, and not alcohol N.O.S. within the meaning of Item 1497."

Respectfully submitted,

DEWEY H. PALMER,
Attorney for Appellant, Reconstruction Finance Corporation.

APPENDIX I

TAX-FREE WITHDRAWALS BY THE UNITED STATES OR GOVERNMENTAL AGENCY

Sec. 182.580 General.—Alcohol may be withdrawn from any industrial alcohol plant or bonded warehouse tax-free for the use of the United States or any governmental agency thereof, pursuant to permit issued on Form 1444. (*; Sec. 3108 (b), I. R. C.)

Sec. 182.581 Permit, Form 1444.—The proprietor of the warehouse may not ship alcohol to the United States or governmental agency thereof unless he is named as vendor in the basic permit, Form 1444, and such permit is in his possession. The permit may remain in the possession of the proprietor of the bonded warehouse until it is canceled or is recalled by the department or governmental agency to which issued. (*; Secs. 3101, 3108 (b), 3114 (a), I. R. C.)

Sec. 182.582 Gauge of alcohol.—The proprietor will gauge each package of alcohol withdrawn tax-free, unless withdrawn on the original gauge, and prepare Form 1440, in triplicate, giving the details of such gauge. The packages shall be marked in accordance with sections 182.518 to 182.526. Upon shipment of the alcohol, one copy of Form 1440 will be forwarded to the supervisor of the district in which the warehouse is located and one copy to the consignee. The remaining copy will be filed at the warehouse as a permanent record in accordance with section 182.643. (*; Secs. 3101, 3103, 3108 (b), I. R. C.)

Sec. 182.583 Bill of lading.—Where the alcohol is transported from the bonded warehouse by a common carrier, the person to whom the alcohol was delivered for shipment shall furnish a copy of the bill of lading covering transportation of the alcohol from the point of shipment to final destination to the storekeeper-

gauger, who will forward the same to the district supervisor with Form 1440. (*; Sec. 3101, I. R. C.)

Sec. 182.584 Notice and receipt of shipment, Form 1453—At the time of shipping alcohol tax-free to the United States or governmental agency thereof, the proprietor will prepare Form 1453 and forward it to the Government officer to whom the alcohol is to be delivered at destination. Such Government officer, upon receiving the shipment, will execute the certificate of receipt and forward the form to the district supervisor specified at the bottom of the form. (*; Secs. 3101, 3108 (b), I. R. C.)

Taken from
U. S. Treasury Department
Bureau of Internal Revenue
Regulations 3
Industrial Alcohol
1942
Issued under authority contained in Sections 3105, 3124 (a) (6) and 3176, Internal Revenue Code
(Public No. 1, 76th Congress)